IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4308 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BABUBHAI MANILAL PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 4308 of 1998

MR NITIN M AMIN for Petitioner No. 1-8

MR KODEKAR, APP for Respondent No. 1

HL PATEL ADVOCATES for Respondent No. 2

NOTICE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 11/09/2003

ORAL JUDGEMENT

#. Heard Mr.N.M.Amin, learned advocate for the petitioners, Mr.Kodekar, learned APP for the respondent State and Mr.V.H.Patel, learned advocate for respondent No.2.

#. A complaint has been filed by the respondent complainant against the present petitioners - original accused directly into the court of the learned Judicial Magistrate, First Class, Kalol on 12.9.1997 under sections 193, 195, 465, 468, 469, 470, 473, 475, 476 and 477-A of IPC. It is alleged that without recording or verification of the statement of the complainant, the learned Judicial Magistrate, First Class, has issued the process on the same day under Section 156(3) of the Criminal Procedure Code and directed the concerned Police Officer to investigate and submit the report, which gave rise to file the present petition.

#. The facts are required to be kept in mind to the effect that one Viththalbhai Chhagandas of Kalol proposed a scheme to form Cooperative Housing Society for the purpose of constructing the houses and he became the Promoter of the said proposed society known as Gurukrupa Cooperative Housing Society Limited wherein the present petitioners and other persons became the members of the said proposed society and that some initial payment was also made and receipts to that effect were also issued in favour of them. Thereafter, the said Viththalbhai Chhagandas started proceedings for getting the land from the AUDA and also recovered further amount towards contribution from the members during the year 1992-1994 and receipts to that effect have been issued. Meanwhile, said Viththalbhai Chhagandas and his son Patel Chimanlal Viththalbhai has took rein of the proposed society without consent of the petitioners and other members and without following due process of law, and, thereafter, Babubhai Sankalchand Patel and the respondent complainant entered into the society as the promoters. The said Babubhai Patel put his machinery in motion in AUDA and illegally and without consent of the members of the society, transferred the whole scheme in his name, and managed to get the land released from the AUDA for the purpose of the society and sold the same to the new members after making huge profit. Therefore, the present petitioners filed Regular Civil Suit No.137 of 1996 in the court of the learned Civil Judge (Junior Division), Kalol against the present complainant and others and obtained interim relief. In the said suit, the complainant and others appeared and filed the false affidavit along with the false and fabricated documents

and also misappropriated huge amount from the bank account of the said society. So, ultimately, the complaint has been filed by the present petitioner No.2 directly into the court of the learned Judicial Magistrate, First Class, Kalol against the present complainant and three other persons for the offence punishable under sections 193, 196, 406, 420, 467, 468, 474, 477-A and 114 of IPC on 19.8.1996 wherein the learned Magistrate passed the order under Section 156(3) of the Code and directed the concerned Investigating Officer to investigate into the matter and submit his report within the stipulated time. The respondent - complainant has filed the complaint in question against the petitioners on 12.9.1997.

#. Learned counsel for the petitioners took me to the complaint in question which has been annexed along with the petition as Annexure-C - page 11. He argued that, while doing so, the respondent has suppressed the material facts of filing the present complaint by petitioner No.2 against him and others. Hence, it is submitted that, it is nothing, but, sheer misuse of process of law.

#. It appears that the proposed society has been formed by Viththalbhai Chhagandas Patel in the year 1992 in the name and style as "Gurukrupa Cooperative Housing Society Limited" wherein, initially, names, which have been shown at Annexure-I page 30 in the compilation, have been shown as proposed members of the society. It is not in dispute that the present respondent complainant is not the original promoter. On demise of Viththalbhai Chhagandas Patel, his son, Patel Chimanlal Viththalbhai took over the rein of the proposed society. It also appears that, civil as well as criminal proceedings have been initiated by the present petitioners. Even in criminal complaint which has been filed into the Court, chargesheet has been filed against the complainant and others. The said fact has not been disclosed by the present respondent at the time of filing of the complaint in question.

#. Therefore, prima facie, it is established that members of the society have filed civil as well as criminal proceedings against the respondent - complainant and others. In the criminal case which has been filed by the petitioner No.2, chargesheet has been submitted against the respondent - complainant. Still, as a counter-blast, the impugned complaint has been filed suppressing the material facts before the court below. It is nothing but a misuse of process of law and just to

pressurise the members of the society, who have raised the grievance in the court of law by filing civil as well as criminal proceedings, the impugned complaint has been filed. Hence, it is required to be quashed only on that ground.

#. Thus, the complaint being Inquiry Case No.40 of 1997 pending in the court of the learned Judicial Magistrate, First Class, Kalol and the process issued in the said complaint are quashed and set aside. Rule is made absolute.

(R.P.Dholakia,J)
(pathan)